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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re F.S., a Person Coming Under the  
Juvenile Court Law.

B211110

(Los Angeles County  
Super. Ct. No. CK45931)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Donna Levin, Juvenile Court Referee. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Byron G. Shibata, Associate County Counsel, for Plaintiff and Respondent.

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Father M.G. appeals from an order by the juvenile court terminating parental rights to his daughter, F.S. (Welf. & Inst. Code, § 366.26; all statutory references are to this code unless otherwise indicated.) He contends the court erred by finding the beneficial relationship exception to termination codified in section 366.26, subdivision (c)(1)(B)(i) inapplicable. We find no error and affirm.

### **FACTUAL AND PROCEDURAL SUMMARY**

Mother R.S. is not a party to this appeal by father. F.S. was detained in September 2006, when she was less than one month old. The Department of Children and Family Services (the Department) filed a petition under section 300, subdivision (b) alleging that mother had a 13-year history of substance abuse; was currently using cocaine; and had an older child, D.S., who had been removed from her home and placed for adoption in a previous dependency proceeding. The petition alleged that mother was incapable of providing regular care and supervision for the child. Mother admitted her drug history, and that she tested positive for cocaine in June 2006. She identified M.G. as the father, but said she had no information as to his whereabouts. The child was placed in the home of the mother's godmother and her husband. The petition was sustained as to mother and reunification services were ordered for her.

The Department searched for father, who finally was located in July 2007. Father immediately expressed his desire to visit if paternity was established. Despite initial difficulty in arranging a paternity test, DNA/HLA test results established father was the biological father of the child, and he was declared to be on October 31, 2007 by the juvenile court.<sup>1</sup> No reunification services were ordered for him. After one visit by father in November 2007, the caretaker reported to the Department that he “smelled like he was drinking.” Meanwhile, mother's whereabouts were unknown, and she was not in compliance with her plan.

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<sup>1</sup> Previously, father was found to be the alleged father.

Neither parent appeared for the 12-month review hearing, at which the juvenile court terminated mother's services. A permanent plan hearing under section 366.26 was set for May 2008. The Department reported that in a Team Decision Making meeting in February 2008, the child's caregivers agreed to place her with Mr. and Mrs. R., a couple who had been a part of the child's life since her placement. The R.s were approved for prospective adoption in October 2007.

The Department reported that the R.s provided F.S. with a nurturing, safe, and loving home environment. During visits to their home, the social worker observed the child to be happy, laughing and smiling. The R.s were in the process of adopting the child. From January to May 1, 2008, neither parent had visited. Neither father nor mother appeared at the section 366.26 hearing on May 1, 2008, which was continued to July 31, 2008.

On July 31, 2008, father filed a section 388 petition requesting a home-of-parent order, return of the child to his custody, presumed father status, family reunification services, liberalized unmonitored visitation, and assessment of the paternal grandmother's home for placement. As changed circumstances supporting the petition, father said he had visited four times a week, for two to three hours each time, before July 17, 2008, and that after that date, when the child was moved to the home of the R.s, he was only able to visit every other week for an hour. Father also said he was participating in an anger management class and that his home was appropriate. He said he loved his child, was ready and able to provide for her, and that it would be in her best interests to be raised by him.

The court conducted a combined hearing on plaintiff's section 388 petition and on permanent placement under section 366.26 on July 31, 2008. Counsel for the child opposed the motion because father had not visited between the end of November 2007 and July 2008, when he had one visit. Father's section 388 petition was summarily denied because he failed to present evidence of changed circumstances and because the proposed changes would not promote the best interests of the child. The matter was continued for a contested section 366.26 hearing.

At the contested hearing, father testified that he had a total of five unmonitored and two monitored visits with F.S. After that, for four to five weeks he had four hours of visits each week. These visits took place in the home of the previous caregivers. Father described his interaction with the child as “good.” He took pictures, and played with her. Father then said he had visited the child six times (once every two weeks) in 2008. He said the paternal grandmother had been available for placement, but that her home had not been evaluated by the Department. His visits had been monitored by the previous caregivers, and the last time they monitored a visit was in November 2007. Father denied that he had only one actual visit in the last six months, but admitted he did not appear for a visit scheduled on September 4, 2008 because he got lost. He called no other witnesses.

Counsel for the child joined in the Department’s recommendation that father’s parental rights be terminated. The juvenile court addressed father and explained that he was not offered reunification services because he was merely an alleged father, and that the reunification period had ended by the time tests established his paternity. It concluded that father had failed to establish the applicability of the beneficial parental relationship exception to adoption codified in section 366.26, subdivision (c)(1)(B)(i). Father’s parental rights were terminated. The child was found by clear and convincing evidence to be adoptable, and adoption was selected as her permanent plan. Her custody and control was transferred to the Department for adoptive planning and placement. Father filed a timely appeal from the denial of his section 388 petition and from the termination of his parental rights.<sup>2</sup>

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<sup>2</sup> Although father appealed from denial of his section 388 petition, he fails to provide argument or authority regarding that issue in his briefs on appeal. We treat the issue as abandoned. (*Davies v. Sallie Mae, Inc.* (2008) 168 Cal.App.4th 1086, 1096.)

## DISCUSSION

Father argues the trial court erred in finding the beneficial parental relationship exception to adoption codified in section 366.26, subdivision (c)(1)(B)(i) did not apply.<sup>3</sup> “Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345; but see § 366.26, subd. (c)(1)(A), eff. Jan. 1, 2008.) Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when ‘[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.)

“When applying the beneficial parent-child relationship exception, the court balances the strength and quality of the parent-child relationship in a tenuous placement against the security and sense of belonging that a stable family would confer on the child. If severing the existing parental relationship would deprive the child of ‘a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ (*In re Autumn H.* [(1994)] 27 Cal.App.4th [567,] 575.) [¶] We determine whether there is substantial evidence to support the court’s ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court’s ruling. [Citation.] The reviewing court must affirm a trial court’s rejection of these exceptions if the ruling is supported by substantial evidence. (*In re*

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<sup>3</sup> The Department argues father forfeited the issue because it was not raised in the juvenile court. At the section 366.26 hearing, county counsel argued that father had failed to establish any of the exceptions, and discussed the evidence contrary to the applicability of the beneficial parental relationship exception. Counsel for the child also addressed the exception. The juvenile court also explained that father had not met the high burden of establishing the exception applied. We conclude the issue is preserved for appeal.

*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1234-1235.)

Father argues that he demonstrated that he had occupied a parental role in the child’s life “resulting in significant, positive, emotional attachment, and that severing the parent-child relationship with father would deprive [her] of a substantial, positive emotional attachment such that [she] would be greatly harmed. (*In re Autumn H.*, *supra*, 47 Cal.App.4th at p. 575.)” He acknowledges his limited visitation, but urges that we consider the benefit of continued contact between himself and the child in the context of the limited visitation permitted. As we have seen, father’s testimony was confused and contradictory about the number and timing of his visits with the child. In his brief, he says he and the child “shared six loving visits lasting four hours each, during which father and [child] took pictures, played, and did the things a normal father and daughter do.”

Citing *In re Casey D.* (1999) 70 Cal.App.4th 38, 51, father contends that day-to-day contact is not required. He also argues that the child need not have a primary attachment to him as a prerequisite to application of the beneficial parent relationship exception, citing *In re S.B.*, *supra*, 164 Cal.App.4th at p. 299.

Substantial evidence supports the juvenile court’s determination that the exception does not apply. Father told the Department that he had met the child in March 2007 when mother took him to the child’s placement for a visit. But he admitted that he had failed to remain in contact with the child. Once he was located again in July 2007, father had few visits with the child. While he characterizes their visits as loving, the Department reported that they were troubled. The social worker reported that father and paternal grandmother had a monitored visit with the child on July 17, 2008. The child cried, closed her eyes, and avoided contact with father and paternal grandmother. For most of the visit, the worker held the child because she did not want to be held by father or grandmother. She closed her eyes and said “no” when they attempted to carry her. Despite that, both father and grandmother grabbed the child and held her. At one point, the social worker had to take her from father because she would not stop crying. She was not responsive to either father or grandmother during the visit.

During that visit, father attempted several times to discuss the case with the worker. When she reminded him that the visit was for him to interact with the child, he accused the worker of having ““something against’ him.” Father demanded the address, age, names and race of the prospective adoptive parents. The worker felt threatened at one point by father’s defensive and escalating attitude toward her. At the end of the visit, father asked to contact the worker to schedule the next visit, but did not do so between that date and August 15, 2008, the last day the worker was assigned to the case.

Father failed to demonstrate that he assumed a parental role with the child. He also failed to demonstrate the child would benefit from continuing the relationship. Father asserts that any weakness in his relationship with the child was the result of the caregiver’s interference with visitation. While acknowledging his responsibility for missed visitation opportunities, he relies on his testimony at trial that his visitations had been cancelled. Father said he had left messages for the social worker and the prior caregivers about visitation, but received no responses. This brief, conclusory testimony is not sufficient to establish that the caregivers presented a significant obstacle to father’s visitation.

### **DISPOSITION**

The order terminating father’s parental rights is affirmed.

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EPSTEIN, P.J.

We concur:

MANELLA, J.

SUZUKAWA, J.